

Senate Bill No. 581

CHAPTER 439

An act to amend Sections 1812.80, 1812.84, 1812.85, and 1812.86 of, and to add Sections 1812.96 and 1812.97 to, the Civil Code, relating to health studios.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 581, Figueroa. Health studio contracts: maximum fees: cancellation rights.

(1) Existing law prohibits a contract for health studio services from requiring payments or financing by the buyer to exceed the term of the contract, nor may the term of the contract exceed three years. Existing law provides a statement of legislative findings with regard to health studio contracts and business practices.

This bill would provide that the limits on the financing and terms of health studio contracts do not apply to the obligation to pay valid, outstanding moneys due under the contract. The bill would revise the statement of legislative findings described above.

(2) Existing law provides that a consumer may cancel a contract for health studio services within 3 business days after the contract is executed or if the agreed upon services are not provided within 6 months after the date of the contract.

This bill would authorize a consumer to cancel a contract for health studio services (a) within 5 business days after the contract is executed, or within 20, 30, or 45 days thereafter if the amount of the contract exceeds certain dollar amounts; (b) if the health studio fails to provide the specific facilities advertised or offered within 6 months, except as specified, or, if no time is indicated, the consumer may cancel the contract within six months; or (c) if the health studio eliminates or reduces the scope of the facilities, as specified. The bill would prescribe the method for calculating the consumer's refund following cancellation of the contract. The bill would provide that a health studio entering a contract for services for \$1,000 or less is not required to comply with certain of these provisions.

The bill would also require a seller of health studio services to hold in trust all money received from a consumer if the health studio facility has not yet opened for business, except in certain circumstances, and would prohibit the seller from drawing on, transferring or encumbering those funds, except as specified.

(3) Existing law prohibits any contract for health studio services from requiring a payment from the client in excess of \$1,000, exclusive of interest or finance charges.

This bill would increase that limit to \$3,000, including initiation or initial membership fees, until January 1, 2010, at which time that limit would be further increased to \$4,400, including those fees.

The people of the State of California do enact as follows:

SECTION 1. Section 1812.80 of the Civil Code is amended to read:

1812.80. (a) The Legislature finds that the health studio industry has a significant impact upon the economy and well-being of this state and its local communities; and that the provisions of this title relating to contracts for health studio services are necessary for the public welfare.

(b) The Legislature declares that the purpose of this title is to safeguard the public against fraud, deceit, imposition and financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of health studio services by prohibiting or restricting false or misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, and discriminatory practices by which the public has been injured in connection with contracts for health studio services.

SEC. 2. Section 1812.84 of the Civil Code is amended to read:

1812.84. (a) A contract for health studio services may not require payments or financing by the buyer to exceed the term of the contract, nor may the term of the contract exceed three years. This subdivision does not apply to a member's obligation to pay valid, outstanding moneys due under the contract, including moneys to be paid pursuant to a termination notice period in the contract in which the termination notice period does not exceed 30 days.

(b) A contract for health studio services shall include a statement printed in a size at least 14-point type that discloses the length of the term of the contract. This statement shall be placed above the space reserved for the signature of the buyer.

SEC. 3. Section 1812.85 of the Civil Code is amended to read:

1812.85. (a) Every contract for health studio services shall provide that performance of the agreed upon services will begin within six months after the date the contract is entered into. The consumer may cancel the contract and receive a pro rata refund if the health studio fails to provide the specific facilities advertised or offered in writing by the time indicated. If no time is indicated in the contract, the consumer may cancel the contract within six months after the execution of the contract and shall receive a pro rata refund. If a health studio fails to meet a timeline set forth in this section, the consumer may cancel the contract at any time after the expiration of the timeline, provided that if, following the expiration of the timeline, the health studio does provide the advertised or agreed upon services, the consumer may cancel the contract up to 10 days after those services are provided.

(b) (1) Every contract for health studio services shall, in addition, contain on its face, and in close proximity to the space reserved for the signature of the buyer, a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

“You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of the health studio after the date of this agreement, excluding Sundays and holidays. To cancel this agreement, mail or deliver a signed and dated notice, or send a telegram which states that you, the buyer, are canceling this agreement, or words of similar effect. The notice shall be sent to,

 (Name of health studio operator)
 at _____
 (Address of health studio operator).”

(2) The contract for health studio services shall contain on the first page, in a type size no smaller than that generally used in the body of the document, the following: (A) the name and address of the health studio operator to which the notice of cancellation is to be mailed, and (B) the date the buyer signed the contract.

(3) The contract shall provide a description of the services, facilities, and hours of access to which the consumer is entitled. Any services, facilities, and hours of access that are not described in the contract shall be considered optional services, and these optional services shall be considered as separate contracts for the purposes of this title and Section 1812.83.

(4) Until the health studio operator has complied with this section, the buyer may cancel the contract for health studio services.

(5) All moneys paid pursuant to a contract for health studio services shall be refunded within 10 days after receipt of the notice of cancellation, except that payment shall be made for any health studio services received prior to cancellation.

(c) If at any time during the term of the contract, including a transfer of the contractual obligation, the health studio eliminates or substantially reduces the scope of the facilities, such as swimming pools or tennis courts, that were described in the contract, in an advertisement relating to the specific location, or in a written offer, and available to the consumer upon execution of the contract, the consumer may cancel the contract and receive a pro rata refund. The consumer may not cancel the contract pursuant to this subdivision if the health studio, after giving reasonable notice to its members, temporarily takes facilities out of operation for reasonable repairs, modifications, substitutions, or improvements. This subdivision shall not be interpreted to give the consumer the right to cancel a contract because of changes to the type or quantity of classes or equipment offered, provided the consumer is informed in the contract that the health studio reserves the right to make changes to the type or quantity

of classes or equipment offered and the changes to the type or quantity of classes or equipment offered is reasonable under the circumstances.

(d) (1) If a contract for health studio services requires payment of one thousand five hundred dollars (\$1,500) to two thousand dollars (\$2,000), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 20 days after the contract is executed.

(2) If a contract for health studio services requires payment of two thousand one dollars (\$2,001) to two thousand five hundred dollars (\$2,500), inclusive, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 30 days after the contract is executed.

(3) If a contract for health studio services requires payment of two thousand five hundred and one dollars (\$2501) or more, including initiation fees or initial membership fees, by the person receiving the services or the use of the facility, the person shall have the right to cancel the contract within 45 days after the contract is executed.

(4) The right of cancellation provided in this subdivision shall be set out in the membership contract.

(5) The rights and remedies under this paragraph are cumulative to any rights and remedies under other law.

(6) A health studio entering into a contract for health studio services that does not require payment in excess of one thousand dollars (\$1000), including initiation or initial membership fees and exclusive of interest or finance charges, by the person receiving the services or the use of the facilities, is not required to comply with the provisions of this subdivision that are added by the act adding this paragraph.

(e) Upon cancellation, the consumer shall be liable only for that portion of the total contract payment, including initiation fees and other charges however denominated, that has been available for use by the consumer, based upon a pro rata calculation over the term of the contract. The remaining portion of the contract payment shall be returned to the consumer by the health studio.

SEC. 4. Section 1812.86 of the Civil Code is amended to read:

1812.86. (a) No contract for health studio services shall require payment by the person receiving the services or the use of the facilities of a total amount in excess of the amount specified in subdivision (b) or (c).

(b) The limit specified in subdivision (a) shall, on and after January 1, 2006, be three thousand dollars (\$3,000), inclusive of initiation or initial membership fees and exclusive of interest or finance charges.

(c) The limit in subdivision (a) shall, on and after January 1, 2010, be four thousand four hundred dollars (\$4,400), inclusive of initiation or initial membership fees and exclusive of interest or finance charges.

SEC. 5. Section 1812.96 is added to the Civil Code, to read:

1812.96. (a) Except as provided in subdivision (c) or (d), all money received by the seller of health studio services from a consumer for a health studio facility that has not yet opened for business shall be held in trust and shall be deposited in a trust account established in a state or federally chartered bank or savings association. The seller shall not draw, transfer, or encumber any of the money held in trust until five business days after the health studio facility has opened and the seller has fully paid refunds to consumers who canceled their contracts as provided in subdivision (b) or in Section 1812.85.

(b) In addition to any other cancellation rights, a consumer who pays any money under a contract for health studio services for a health studio facility that has not yet opened for business has the right to cancel the contract and receive a full refund at any time prior to midnight of the fifth business day after the date the health studio opens for business. The cancellation right shall be set forth in the contract. The refund shall be paid within 10 days of receipt of notice of cancellation.

(c) Notwithstanding subdivision (a), a seller of health studio services may draw on money held in trust to pay refunds or may draw, transfer, or encumber funds to the extent that the amount is offset by a bond of equal or greater amount that satisfies this subdivision. The bond shall be issued by a surety insurer admitted to do business in this state and shall be filed with the Secretary of State. The bond shall be in favor of the State of California for the benefit of consumers harmed by a violation of this title.

(d) Subdivision (a) does not apply to a seller of health studio services that is, at the time money is received from the consumer, operating at least five health studio facilities in this state that have been in operation for a period of at least five years, and that has an excess of current assets over current liabilities of at least one million dollars (\$1,000,000).

SEC. 6. Section 1812.97 is added to the Civil Code, to read:

1812.97. Nothing in this title is intended to prohibit month-to-month contracts. This section is declaratory of existing law.